

negative infringement. It is not an actionable imitation merely to take the idea suggested by the design unless it works out in the way protected by the registration. Where an article may be readily manipulated into a position similar to the illustration of a design registration, there will be infringement."

Therefore, the eye is the sole test and looking at the two sets of tiles one would find that the sizes, the profiles and the configuration of these tiles when laid together are so similar that they are likely to confuse, and there appears to be no outstanding features to distinguish between these two sets of tiles. As the claim for damages has been abandoned it is not necessary for me to consider whether the defendants were aware of the registration of the design.

Consequently there will be an order for injunction in terms of the prayer.

As regards prayer (b) the plaintiffs have conceded that it would be wasteful to destroy approximately 25,000 pieces now held by the defendants as stock. It was suggested that these tiles should be delivered and donated to some religious or charitable institution. The defendants maintained that these tiles were manufactured before they received the notice from the plaintiffs. They should, therefore, be allowed to dispose of the stock now held by them. In my view an order for destruction or delivery is consequential upon the finding that there was an infringement of the design. If the contention of the defendants is granted it would defeat the purpose for which these proceedings were brought.

Consequently there will not be an order for destruction as prayed but in lieu thereof there will be an order that the stock of tiles now held by the defendants be delivered to the bailiff of this court for distribution to religious and charitable institutions at the discretion of the assistant registrar. There will also be an order for costs against the defendants.

*Order accordingly.*

Solicitors: *Wriggleworth & Co.; Isahak Hamid & Co.*

## SENG CHONG METAL WORKS LTD. v. LEW FA

[F.C. (Thomson L.P., Ong Hock Thye F.J. and Gill J.)  
March 17, 1966]

[K.L. — Federal Court Civil Appeal No. X. 3 of 1966]

*Damages — Personal injury — Left hand — Amputation up to wrist leaving stump of thumb.*

*Machinery Ordinance, 1953 — Machinery (Driven Machinery) Regulations, 1959, reg. 31 — Breach of statutory duty — Contributory negligence.*

The respondent an apprentice machine operator employed by the appellant company, suffered injuries while operating a press brake machine. As a result of

A the accident a portion of his left hand had to be amputated. He sued his employers for breach of statutory duty and in the event Abdul Aziz J. found in his favour and awarded him *inter alia* \$43,000 general damages ([1966] 1 M.L.J. 231). The employers appealed against the finding on the question of liability, arguing that there was contributory negligence on the part of the respondent.

B Held: although without some sort of inadvertence on the part of the workman the accident could not have happened, nevertheless, in this case the fundamental cause of the accident was the failure to comply with the machinery regulation, the failure to supply proper guard, and having regard to the policy of the law which is to protect workmen operating potentially dangerous machinery, any inadvertence on the part of the respondent did not go so far as to constitute contributory negligence.

Observation on the award of damages.

*Cases referred to:—*

(1) *Mitchell v. North British Rubber Co. Ltd.*  
[1945] S.C. (J) 69, 73.

(2) *Lim Thong Eng v. Sungei Choh Rubber Co. Ltd.*  
[1962] M.L.J. 15, 16.

FEDERAL COURT.

*H. E. Cashin* for the appellant.

*Kam Woon Wah* for the respondent.

Thomson L.P. (delivering oral judgment):

E The plaintiff in this case at the material time was an apprentice machine operator employed by the defendant company in a factory at Kuala Lumpur. In the course of his employment he suffered injuries while operating a metal working machine known as a press brake. The injuries which he suffered were very severe and a portion of his hand had to be amputated.

F In consequence he sued his employer for breach of statutory duty, the alleged breach being a failure to fence the machine, such failure being a contravention of Regulation 31(i) of the Machinery (Driven Machinery) Regulations, 1959.

G The defences were a denial of breach and contributory negligence.

H In the event Abdul Aziz J. found in favour of the plaintiff and awarded him a very substantial sum of money, \$43,000 general damages and \$450 special damages.

I Against that judgment the employer has now appealed, but his appeal only relates to the question of the liability. There is no appeal on the question of quantum of damages and therefore it is not competent for this court to consider the quantum, although for myself I would express the view that the award was an extremely generous one.

Mr. Cashin, who appeared for the appellant, with his customary candour, has conceded that he could not well contest the judge's finding that there was a breach of the machinery regulations.

In that, in my view, he was right. He has confined himself to arguing that there was contributory negligence on the part of the workman, the respondent.

The evidence as to what happened is not as detailed as it might be, it never is, and it is of course perfectly clear that without some sort of inadvertence on the part of the plaintiff, I use the word "inadvertence" advisedly, the accident could not have happened. Nevertheless, in my view, it is clear that the primary cause, the fundamental cause, of the accident was the failure to comply with the machinery regulations, the failure to supply proper guard, and that such inadvertence as there was on the part of the workman did not go so far as to constitute negligence of which the court should take cognisance.

It has to be remembered that the workman, the plaintiff, was a young man of 19 years of age and had been employed in this type of work for only three months. By no stretch of the language could he be called an experienced workman.

His story was that at the time of the accident he was operating the machine. He was inserting a piece of metal into it and that while he was doing so his hand slipped in and was caught. There was no evidence to contradict him when he said that he was operating the machine. Mr. Cashin put it to us that there was a possibility that he was, as it were, lounging against the machine and his hand slipped in. Of course that is a possibility. Everything is a possibility. But there was the plaintiff's own evidence which was not contradicted that he was operating the machine and the hypothesis advanced by counsel was not put to him in cross-examination; it was something, as I understand Mr. Cashin to have said, that he put to the judge in the course of argument. If then the plaintiff was engaged in operating the machine he was operating it for his employer's benefit and it seems to me difficult to suppose that any inadvertence on his part could have gone beyond this that he was concentrating more on his work for his employer than on his own safety. In the circumstances I am not prepared, having regard to the policy of the law which, of course, is to protect workmen operating potentially dangerous machinery, to say any inadvertence on the part of the plaintiff amounted to contributory negligence as we understand that expression.

The appeal is dismissed with costs and the deposit should be paid to the respondent against his taxed costs.

Ong Hock Thye F.J. (delivering oral judgment): I agree with my Lord.

With regard to the cause of the accident, I

A am satisfied that, so far as the respondent was concerned, whatever he did he must have done through inadvertence, which is the type of conduct for which protection is contemplated by the safety regulations, as explained in the case of *Mitchell v. North British Rubber Co. Ltd.*<sup>(1)</sup> referred to by me in *Lim Thong Eng v. Sungei Choh Rubber Co. Ltd.*<sup>(2)</sup>

My only further observation is that I share the view of my Lord that the damages awarded in this case had been very very generous indeed.

I would dismiss the appeal with costs.

C Gill J.: concurred.

*Appeal dismissed.*

Solicitors: *Murphy & Dunbar; Kam Woon Wah & Co.*

D

### ANG TIONG SENG v. KONG AH LOI

[A.C.J. (Wee Chong Jin C.J.) March 19, 1965]

[Singapore — District Court Appeal No. 4 of 1965]

E *Local Government Ordinance, 1957, s. 298 — Closing order — Occupier repairing house but without obtaining prior approval of local authority — Whether entitled to deduct amount spent from rents.*

*Landlord and Tenant — Repairs to premises under closing order — Whether tenant entitled to recover amount from landlord.*

F In this case a closing order had been made against certain premises. The occupier thereupon repaired the premises and spent \$2,800 therefor. The owner brought an action *inter alia* to recover arrears of rent and the tenant counterclaimed for \$2,800. Judgment on the counterclaim was given in favour of the tenant and the owner appealed.

G Held: as the tenant had failed to obtain the approval of the local authority before executing the repairs she was not entitled to recover the amount spent by her from the owner and therefore the appeal must be allowed and the judgment on the counterclaim set aside.

[Editorial Note: The respondent applied to the Federal Court (Federal Court Civil Application No. Y2 of 1966) for special leave to extend the time within which she had to file a notice of appeal. In her affidavit filed in support of her application she deposed that she was unable to raise money to prosecute the appeal and that she had made an application to the Legal Aid Bureau for legal aid. This application for legal aid was also made outside the period for filing a notice of appeal. The Federal Court (Tan Ah Tah F.J., Buttrose and Winslow JJ., June 22, 1966) dismissed the application on the ground that there were no special circumstances to justify the application for extension of time. The following cases were considered by the court:—  
I *Wilkinson v. R.* (1916), 19 W.A.L.R. 17; *A. Majeed v. Yeo Chng Tay* [1964] M.L.J. 75; *Ratnam v. Cumaraswamy* [1965] 1 M.L.J. 285; *Addison v. Addison* [1960] 1 W.L.R. 1088; *Re Noble (A Bankrupt)* [1965] Ch. 129; *Re Coles & Ravenshear* [1907] 1 K.B. 1.]

Case referred to:—

(1) *Yap Choo Lian v. Chan Ah Yong* [1952] M.L.J. 166.